

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1524 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE COMPANY

Versus

KOKILABEN ANDERSINGH MAKAWANA

Appearance:

MS MEGHA JANI for Petitioner
NOTICE SERVED for Respondent No. 1, 3
MR AKIL KURESHI for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/10/2000

ORAL JUDGEMENT

This is a revision application filed under Section 115 of the Civil Procedure Code challenging the order passed by MAC Tribunal (Aux) at Nadiad below exh.6

in MAC Petition No.30 of 1996. The respondents herein have filed MAC Petition No.30 of 1996 claiming compensation at the rate of Rs.4 lakhs for the alleged death of Andersingh Makwana. Respondent no.1 is wife and respondents nos.2 and 3 are parents of the deceased. It is alleged in the main petition that the deceased was the owner of a three-wheel tempo bearing No.GJ-7-X-1739. The said tempo met with an accident with an unknown vehicle and that the owner who was driving the said tempo at that time had died due to the injuries. The tempo in question was insured with the present petitioner-insurance company. The owner of the vehicle which was responsible for the accident was not joined as party to the claim petition. The said claim petition is annexed along with the revision memo. Therefore, the accident is caused by some unknown vehicle whose driver after the accident run away.

2 The respondents herein who are the claimants filed MAC Petition claiming Rs.4 lakhs as compensation. The claimants have also filed an application u/s 140 of the Motor Vehicles Act, 1988 claiming interim compensation of Rs.50,000/-. The learned MAC Tribunal by its order dated 22.7.1996 directed the insurance company to deposit Rs.50,000/- and the claimants were permitted to withdraw the said amount. Interest at the rate of 12% per annum was also awarded from the date of the application till the realisation of the said amount. The aforesaid order is challenged by the insurance company by way of filing this revision application.

3 At the time of hearing of this application it is pointed out by Ms Jani for the petitioner that in view of the fact that neither the driver nor the insurance company of the other vehicle is joined in the petition, as per the insurance policy which is produced on record (at Annexure-B to the revision application) the petitioner-insurance company is not liable to pay any amount to the claimants. Ms Jani has relied upon clause IMT 71 to substantiate her say that if the insured himself is driving the vehicle and if he sustained injury or if ultimately he dies in the accident, he cannot be indemnified by the insurance company. Said clause IMT 71 reads as under:-

"IMT 71 PERSONAL ACCIDENT COVER FOR DRIVER (OTHER THAN PAID DRIVER):

It is hereby understood and agreed that company undertakes to pay compensation on the scale provided for bodily injury/death as hereinafter defined sustained by driver (other than paid

driver) of the vehicle in direct connection with the use of motor vehicles or whilst mounting or dismounting or driving the vehicle and caused by violent accidental external and visible means which independently or any other cause shall within 12 calendar months of the occurrence of such injury result in :

SCALE OF COMPENSATION AMOUNT

(a) Death only Rs.20000

(b) xxxxxx "

4 In the submission of Ms Jani in any case assuming that the insured was also entitled to get compensation by virtue of the aforesaid facts, the liability of the insurance company cannot be more than Rs.20,000/- and that the Tribunal should not have passed the order asking the insurance company to deposit Rs.50,000/-. However, according to her even the aforesaid clause will not apply if the insured was driving the vehicle. Mr Qureshi submits that the aforesaid clause cannot be said to be applicable in such a narrow sense that unless a paid driver was employed by the owner then only the insurance company is liable to indemnify the insured. According to him, even if the owner himself is driving the vehicle, he is also entitled to claim benefit under Section 71 of the Act. Considering the rival contentions of both the authorities prima facie it seems that even if the insured was driving the vehicle, the insurance company is liable to indemnify him as per the insurance policy. Under these circumstances in any case the interim order of Rs.50,000/- could not have been passed in view of the policy on record. I allow this revision application partly and the amount of Rs.50,000/- awarded by the Tribunal is modified to Rs.20,000/-. The rest of the directions regarding the interest etc will remain intact. It is however clarified that these are only tentative observations and the Tribunal may decide the matter on its own merits and in accordance with law and in case ultimately if it is decided that as per the policy of the insurance company no liability could have been fastened on the insurance company, the claimants will have to pay back the aforesaid amount to the insurance company. For that purpose while allowing the claimants to withdraw the aforesaid amount as per this order, the Tribunal will take necessary security from the claimants so that in case the question of repayments to the insurance comes, the same can be taken care of. The Tribunal shall endeavour to hear and decide the MAC Petition No.30 of 1996 as early as possible and preferably by 30.4.2001.

In view of the same, the revision application is partly allowed. Rule is made absolute to the aforesaid extent.

(mohd)